IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3931 of 2006
With
SPECIAL CIVIL APPLICATION No. 3932 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA SD/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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BHATT CHANDRIKABEN BHANUSHANKAR & 1-Petitioner(s)
Versus
STATE OF GUJRAT & 3 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1 - 2.
MS ARCHANA RAVAL ASSTT GOVERNMENT PLEADER for Respondent(s):1-2, 4,
MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 24/08/2006

ORAL JUDGMENT

1. The petitioners have approached this Court under Article 226 of the Constitution with the grievance that appointments on the post of

Vidya Sahayak pursuant to the advertisement dated 20.7.2004 were denied to them arbitrarily and they have, therefore, prayed for a direction to respondent No.3 to issue appointment orders to them.

2. The facts about which there is no controversy are that the petitioners are qualified for the post of Vidya Shayak and had applied for the same pursuant to the advertisement dated 20.7.2004 issued by respondent No.3. It was stated in the advertisement itself that sports persons were entitled to the benefits under and in terms of the Government Resolutions dated 25.2.1980 and 1.8.1990; and that certified copy of the certificate issued by the competent officer was required to be annexed with the application. It is the case of the petitioners that they had submitted the requisite certificates for participation in sport but, retaining one certificate, the other certificates issued by the Sports Authority of Gujarat were returned to the petitioners, orally saying that they were not necessary. That averment is disputed on behalf of the respondent. However, it is not in dispute that the petitioners had submitted representations dated 2.11.2004 and 5.11.2004 for the purpose of ensuring due weightage and

benefits on account of their participation in the sports event and they had once again obtained fresh certificates from the Sports Authority of Gujarat and produced the same alongwith the representations even before the letters for interview were issued on 7.11.2004 and before the actual interview held on 17.11.2004. It is again not in dispute that, if the benefits of the aforesaid resolutions were accorded to the petitioners, they would have been higher in the merit order and in the selection list and would have been appointed in preference to the other candidates who were ultimately appointed pursuant to the selection process in question. It is also not in dispute that the petitioners had participated in the National School Games in Archery at Kolkata in the years 2001-2002. Upon realizing that additional marks due on account of being sports persons were not being given to the petitioners, they approached the Civil Court alongwith another candidate by filing a civil suit with an application for injunction. It is the saddening reality that the regular civil suit filed in November, 2004 remained pending without any interim or final orders and, going by the rojnama of that suit, its hearing on most of the dates was adjourned “in the interest of justice”. That suit is stated to have been withdrawn pending the present petitions.

3. As against the above broad facts, the case of the respondents, as stated in the affidavit-in-reply of the District Primary Education Officer and forcefully argued by his learned counsel Mr.H.S.Munshaw, was that the certificates issued by the Sports Authority of Gujarat were not attached with the application made by the petitioners and hence their case could not be considered for additional 5% marks in terms of the aforesaid resolutions. It was for the first time that the certificates dated 4.11.2004 issued by the Sports Authority of Gujarat at Gandhinagar were produced with the representation of the petitioners, which could not legally be considered. It is further stated that, in all, 1821 posts were advertised and all the posts, inclusive of C.P.Ed. Vidya Sahayaks, were filled up. It is conceded that the third plaintiff in the suit filed by the petitioners was subsequently appointed, pending the suit, after verification of his application and other certificates. By filing an additional affidavit on behalf of the petitioners, it is stated, and it is conceded on behalf of the respondent, that, as against 91 vacancies of Vidya Sahayaks of C.P.Ed. candidates, 87 vacancies were filled up pursuant to the advertisement dated 20.7.2004;

and 4 vacancies of C.P.Ed. candidates were not filled. However, it was clarified by Mr.Munsha that those 4 vacancies were in reserved category and the petitioners fell in general category.

4. Learned counsel Mr.Pujara argued for the petitioners that the factum of participation of the petitioners in the national event of Archery was not in dispute and the certificates in compliance with the requirement of the resolution and the advertisement which were acceptable to the respondents were, at least, submitted before the date of interview and they could have and ought to have been considered for the benefit of the petitioners. He relied upon the judgment of the Supreme Court in ***Charles K. Skaria and others v. Dr.C.Mathew and others [AIR 1980 SC 1230]*** with emphasis on the following observations:

> *"23. We are aware that when a statute vests a pubic power and conditions the manner of exercise of that power, then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas*

were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures."

"24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices. This frustrating delay was by-passed by the State Government in the present case....."

4.1 The learned counsel relied upon the judgment of the Supreme Court in ***Sri Ashok v. State of Karnataka (AIR 1992 SC 80]*** to submit that the candidates who approached the court seeking relief could be granted relief and the case of others could not be considered as they never approached for redress within reasonable time.

4.2 The decision of the Supreme Court in ***Bag***

Raj Singh v. State of U.P. and others [(2003) 1 SCC 726] was relied upon for the proposition that, if a litigant were found entitled to right to relief, she should ordinarily be restored to the position in which she would have been if the wrong complained against had not been done to her; and rights of the parties stood crystallized on the date of commencement of litigation and reliefs should be moulded accordingly.

5. It is clear from bare reading of the Government Resolution dated 25.2.1980 that the government had decided to encourage sports activity and, towards that end, special preference was provided for to encourage sports and games in the State. The requirement of consideration of certificates for participation in sports events and competitions issued only by specified authorities were prescribed to ensure that only genuine sports persons having participated in actual events could get the benefit of the resolution. However, that condition in Clause 4 of the resolution dated 25.2.1980 opens with the word “Generally/Ordinarily” which can be understood to mean that the provision is directory. And it also contains the further provision for an enquiry in case verification of the certification was found to be necessary. Therefore, the respondents

could have considered the certificates which were in any case submitted before the date of interview and, in case of doubt, the claim could have been verified so as to subserve the basic purpose of the resolution, which apparently was to encourage sports activity and reward sports persons. That purpose appears to have been defeated by the respondents by taking a hyper-technical view taking cover of the fact that the certificates signed by the appropriate authority were not submitted in the first instance alongwith the application.

6. There is also no substance in the plea of the respondents that the petitioners cannot now be ordered to be appointed in absence of vacancies. Since, admittedly, not only hundreds of new vacancies have arisen with the passage of time, but the four vacancies remaining unfilled pursuant to the same selection process could be filled up by appointing the petitioners and carrying forward the reserved seats as is admittedly done under the express orders of the government in other districts.

7. Therefore, in the facts and for the reasons briefly discussed hereinabove and following the ratio of the decisions of the Supreme Court referred hereinabove, the petitions

are allowed with the direction to respondent No.3 to appoint the petitioners as Vidya Sahayaks pursuant to their applications and the selection process initiated by the advertisement dated 20.7.2004. The appointments shall be on the same terms and conditions as are allowed to the other candidates appointed pursuant to the same selection process. However, it will be formally retrospective without any financial benefit for the intervening period. These directions shall be carried out within a period of one month.

8. Rule made absolute accordingly with no order as to costs. Direct service is permitted.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)